IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No.115 of 1994

For Approval and Signature:
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
SUMANKUMAR ISHWARLAL PAREKH - Respondent(s)

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Appearance :
MS MM BHATT for Applicant No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI
Date : 10/08/2005

ORAL JUDGMENT
(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the following question under Section 27(3) of the Wealth Tax Act, 1957 (the Act), at the instance of the Commissioner of Wealth-tax, Rajkot:-

> "Whether, the Appellate Tribunal is right in law and on facts in setting aside the order made by the Commissioner of Wealth Tax under Section 25(2) of the Wealth tax Act ?"

2. The Assessment Year is 1983-84 and the valuation date is Asovad Amas of Samvant Year 2038. The assessee filed return of wealth on 28th September, 1983 and was assessed on net wealth of Rs.1,99,540/- under Section 16(1) of the Act. The Commissioner initiated action under Section 25(2) of the Act for the reasons stated in the notice issued on 27th March, 1987. Although the show cause notice is not available on record, from the order of the Commissioner it appears that it was in context of gold ornaments declared by the wife of the assessee, Smt. Arunaben, in the return of wealth filed by her for Assessment Year 1983-84. According to the Commissioner, the explanation of the assessee that gold ornaments belong to the wife of the assessee and were her stridhan was not acceptable because Smt. Arunaben had filed the return of wealth on 29th September, 1983 showing gold ornaments weighing 656 grams and explaining the acquisition of the ornaments as received at the time of her marriage in 1974. According to the Commissioner, Smt. Arunaben

had no source of income and father of the assessee had not shown any expenses at the time of marriage of Arunaben. He, therefore, came to the conclusion that the Assessing Officer had not made proper inquiries regarding the extent and ownership of gold ornaments and source of acquisition to establish whether the ornaments belong to the wife or the husband. He, therefore, set aside the assessment holding that the same was erroneous and prejudicial to the interests of the Revenue.

3. The assessee carried the matter in appeal before the Tribunal. It appears that Smt. Arunaben had also been subjected to revisional proceedings under Section 25(2) of the Act along with two other ladies and all the four appeals were consolidated altogether and heard by the Tribunal. While recording facts the Tribunal has taken note of the fact that, according to the Commissioner, return of wealth filed by Arunaben on 29th September, 1983 after action was taken under Section 132 of the Income-tax Act on 19th March, 1983 at the residential premises of one Shri Bharatkumar Ishwarlal, brother-in-law of the assessee, was accepted by the Assessing Officer without making any inquiries.

4. It appears from the order of the Tribunal that simultaneously similar action was initiated under Section 263 of the Income-tax Act against which the appeals were heard by the Tribunal and the Tribunal had held that CIT could not have taken action under Section 263 of the Income-tax Act because the record of some other assessee would not form the record of the assessee concerned, no matter how closely they were related to the assessee.

5. Ms.M.M.Bhatt, learned Standing Counsel for the applicant – Revenue, has invited attention to decision of this Court rendered on 3rd July, 2002 in Income Tax Reference No.80 of 1989 in assessee's own case to point out that the High Court has reversed the order of the Tribunal holding that record means record available at the time when the Commissioner takes action under Section 263 of the Income-tax Act. She, therefore, urged that on the basis of the decision rendered in assessee's case in income-tax proceedings, Tribunal's order was bad in law and was required to be set aside.

6. In light of the aforesaid judgment of this Court the finding recorded by the Tribunal in relation to the term 'record' cannot be approved and hence, the said finding stands reversed for the reasons given in the aforesaid decision in income-tax proceedings.

7. However, the Tribunal has further found on facts that Smt. Arunaben had declared gold ornaments weighing 656 grams in her return of wealth. That the value of gold ornaments so declared was included in the taxable wealth and the tax levied on passing of Assessment Order under Section 16(3) of the Act was paid by Smt. Arunaben. The explanation tendered by Smt. Arunaben that the gold ornaments were received by her on the occasion of her wedding which took place in 1974 has been accepted by the Tribunal by recording that “It is quite common and customary in Indian families that the parents and other relatives give gold ornaments on the occasion of wedding of a female of a family. Such ornaments are mainly given out of the gold ornaments belonging to other female members or out of gold ornaments received by the parents from their ancestors. The mere absence of entries in the books of the father cannot lead to

the conclusion that no ornaments were given to the lady at the time of her wedding which took place in the year 1974 when rate of gold was very meagre."

8. The Tribunal has further recorded that the departmental representative was not in a position to produce any statement recorded during course of search or recorded during course of proceedings under Section 132(5) of the Income-tax Act which may indicate in any manner that there existed any material to suspect the ownership of the gold ornaments weighing 656 grams claimed by Smt. Arunaben as belonging to her. It is further found that the Commissioner has not been able to bring any material on record to show that Smt. Arunaben was not the real owner but the gold ornaments belong to her husband and none else.

9. In light of these findings the Tribunal has come to the conclusion that the original wealth tax assessments made in the case of the assessee, husband of Smt.Arunaben, cannot be said to be either erroneous or prejudicial to the interests of the Revenue. It is not possible to find any infirmity in

the order of the Tribunal taking into consideration the aforesaid findings of fact recorded by the Tribunal. The provisions of Section 25(2) of the Act are not meant for setting aside the assessments with a view to confirm or remove vague suspicion as to ownership of gold ornaments which have been declared by the wife as an owner. In other words, the revisional jurisdiction cannot be invoked by the authority to find out whether the order of the Assessing Officer is erroneous or not.

10. In the facts and circumstances of the case, the Tribunal was right in law in setting aside the order made by the Commissioner of Wealth-tax under Section 25(2) of the Act. The question is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the Revenue.

11. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
[D.A. MEHTA, J] [H.N. DEVANI, J]

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